

108 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

Pacific Gas and Electric Company

v.

Docket No. EL04-103-000

California Independent System Operator
Corporation

California Independent System Operator
Corporation

Docket No. ER04-835-000

ORDER SETTING COMPLAINT FOR HEARING, ESTABLISHING HEARING
PROCEDURES AND REFUND EFFECTIVE DATE, AND CONSOLIDATING
PROCEEDINGS, AND REGULATORY FAIRNESS ACT NOTICE

(Issued July 8, 2004)

1. In this order, the Commission sets for evidentiary hearing Pacific Gas and Electric Company's (PG&E's) complaint against the California Independent System Operator Corporation (CAISO), regarding the CAISO's current allocation of must-offer obligation (MOO) costs, including minimum load compensation costs (MLCC), to PG&E. We also consolidate this proceeding with the cost allocation proposal set for hearing in Docket No. ER04-835-000. This action benefits customers because it provides the parties with a forum in which to resolve their disputes.

I. Complaint

2. On May 18, 2004, PG&E filed a complaint against the CAISO alleging that the CAISO's current allocation of MOO costs, including MLCC, to PG&E is unjust, unreasonable and unduly discriminatory. PG&E requests that the Commission establish an investigation into this cost allocation but hold such a proceeding in abeyance for no longer than six months, pending the Commission's consideration of proposed Amendment No. 60 filed in Docket No. ER04-835-000. PG&E requests a refund effective date no later than sixty days from the date of this complaint. PG&E also requests that the Commission consolidate this complaint with the proceeding in Docket No. ER04-835-000.

3. PG&E challenges the lawfulness of the current allocation of MOO costs under the CAISO Tariff until the effective date of any changes under Amendment No. 60. The CAISO requested in Docket No. ER04-835-000 that the proposed Amendment No. 60 revisions related to cost allocation of MOO costs be made effective ten days after notice that its so-called Phase 1B MD02 software is ready to be deployed.

4. PG&E states that (1) ninety to ninety-five percent of MOO costs are incurred in Southern California¹ and (2) MOO costs incurred by the CAISO and spread across all load and exports are payments for MLCC largely outside of PG&E's service area for reasons unrelated to the needs of PG&E's customers.² PG&E argues that a rate that was approved once as reasonable may become unreasonable upon a change in circumstances and underlying facts,³ such as the localized occurrence of MOO in Southern California. PG&E contends that the allocation of MOO costs, on a statewide basis, when largely incurred for local reliability purposes is unjust and unreasonable, violates principles of cost causation⁴ and is inconsistent with the manner in which similar costs, such as Reliability Must Run (RMR) costs, are charged. PG&E adds that simultaneously charging PG&E for MOO costs and RMR costs that are used for local reliability purposes, and which are allocated directly to PG&E, is unduly discriminatory. PG&E takes issue with the CAISO's position that implementation of a revised allocation of MOO costs would be excessively difficult.

5. Furthermore, PG&E states that the CAISO's proposal in Amendment No. 60 to increase MOO costs by reducing the occasions on which MLCC payments will be rescinded must not be implemented until the CAISO has remedied the unjust, unreasonable and unduly discriminatory nature of the current MOO allocation. PG&E asserts that otherwise it will pay significantly increased MOO costs that are not caused by conditions on PG&E's transmission system, without any guarantee of when the costs will be reallocated.

¹ Citing CAISO Transmittal Letter at 32, Figures 1 and 2, in Docket No. ER04-835-000.

² Id.

³ Citing 16 U.S.C. § 824d(b) (2000); *Electricity Consumers Resource Council v. FERC*, 747 F.2d 1511 (D.C. Cir. 1984).

⁴ Citing *Alabama Elec. Coop. v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982); *KN Energy v. FERC*, 968 F.2d 1300 (D.C. Cir. 1992).

II. Notice of Filing, Answer and Pleadings

6. Notice of PG&E's complaint was published in the Federal Register, 69 Fed. Reg. 30,290 (2004), with comments, interventions and protests due on June 7, 2004. The CAISO filed an answer to PG&E's complaint. The following parties filed timely motions to intervene, protests or comments: California Department of Water Resources State Water Project (CDWR); California Electricity Oversight Board (EOB); Calpine Corporation; Cities of Redding, Santa Clara, and Palo Alto, California and the M-S-R Public Power Agency; City of Vernon, California; Duke Energy North America LLC and Duke Energy Trading and Marketing L.L.C.; Metropolitan Water District of Southern California (Metropolitan); Northern California Power Agency; Powerex Corp. (Powerex); Sacramento Municipal Utility District (SMUD); Southern California Edison Company (SoCal Edison); Transmission Agency of Northern California; and Turlock Irrigation District. On June 14, 2004, CDWR filed a motion to consolidate. On June 17, 2004, PG&E filed a reply to the CAISO's answer.

III. CAISO Answer

7. The CAISO responds that it makes MLCC payments and allocates MLCC costs in accordance with its Commission-approved open access transmission tariff (Tariff) and states that PG&E has not provided support to the contrary. The CAISO further contends that the fact that it has sought to improve its allocation methodology does not render the current Commission-approved allocation unjust and unreasonable because a rate design proposal need not be perfect or the most desirable but only reasonable.⁵

8. The CAISO agrees with PG&E that the MLCC cost allocation methodology should be consistent with cost causation principles and that Amendment No. 60 will better achieve that goal, but states that it is not practicable to implement the new allocation proposal in Amendment No. 60 in sixty days.

IV. Protests, Comments and Motion to Consolidate

9. CDWR, SMUD and EOB support PG&E's complaint. CDWR and EOB agree that CAISO costs should be allocated using principles of cost causation. CDWR states that reliability costs incurred to meet peak needs should be allocated to peak users on an hourly basis and those incurred to meet localized needs should be allocated to customers

⁵ Citing New England Power Co., 52 FERC ¶ 61,090 at 61,336 (1990), reh'g denied, 54 FERC ¶ 61,055, aff'd sub nom. Town of Norwood v. FERC, 962 F.2d 20 (D.C. Cir. 1992); OXY USA, Inc. v. FERC, 64 F.3d 679, 692 (D.C. Cir. 1995).

in those locations.⁶ CDWR contends that such price signals would enhance efficiency and would empower customers to adjust their usage or support new infrastructure investment to reduce these costs. SMUD believes that a delay in implementation of Amendment No. 60 would unnecessarily extend the period in which it incurs costs due to the unjust, unreasonable and unduly discriminatory allocation methodology. EOB agrees that, if the CAISO can identify the area creating the need for a must-offer unit, then the CAISO should not have substantial difficulty in reallocating the costs and the proposed cost allocation component of Amendment No. 60 should not be postponed until implementation of Phase 1B MD02.

10. Metropolitan argues that the CAISO's proposed allocation of MLCC in Amendment No. 60 is unduly vague. Therefore, Metropolitan joins PG&E's request for a Commission investigation of the CAISO's cost allocation, if the Commission permits that portion of Amendment No. 60 to go into effect.

11. Powerex argues that the must-offer process is not necessary due to the changes in the California markets and should be eliminated. It contends that load-serving entities (LSEs) have complete flexibility and the ability to meet their load requirements prior to real-time without the need for mandatory must-offer and unit commitment requirements. It believes that the must-offer requirement only provides an incentive for LSEs to underprocure in the day-ahead market. Powerex argues that, once the must-offer process is eliminated, the issue of the allocation of MLCC costs will become moot and LSEs will no longer have a reason to underprocure.

12. SoCal Edison states that, to the extent this complaint proceeding results in a different effective date for implementation of a revised allocation of must-offer costs than that proposed for Amendment No. 60, the effective date of SoCal Edison's proposed Transmission Owner Tariff (TO Tariff) revisions filed in Docket No. ER04-890-000 should be that alternate date.

13. CDWR requests that this proceeding be consolidated with Docket Nos. ER04-869-000 and ER04-835-000 because the proceedings raise common issues of law and fact.

⁶ Citing California Indep. Sys. Operator Corp., 101 FERC ¶ 61,219 at P 19 (2002).

V. Discussion**A. Procedural Matters**

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answer and will, therefore, reject it.

B. Analysis

16. The matters raised by PG&E present issues of material fact that cannot be resolved based on the record before us. These material issues of fact include, but are not limited to: (1) whether the CAISO's current allocation of MOO costs is unjust and unreasonable, and (2) if so, what replacement allocation methodology would be just and reasonable, taking into account the feasibility of implementing such a methodology. Accordingly, we will set the complaint for investigation and a trial-type evidentiary hearing under section 206 of the Federal Power Act (FPA).⁷ Moreover, because the cost allocation proposal submitted in Docket No. ER04-835-000 (which we are concurrently setting for trial-type evidentiary hearing) and the cost allocation issue in this proceeding involve common issues of law and fact, we will consolidate the proceedings for purposes of hearing and decision.⁸ Because we are consolidating these proceedings, we will deny PG&E's request to hold this proceeding in abeyance pending the Commission's consideration of the CAISO's proposed modifications to its MOO cost allocation methodology in Docket No. ER04-835-000.

17. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent

⁷ 16 U.S.C. § 824e (2000).

⁸ Here and in Docket No. ER04-835-000, we are setting for hearing the cost allocation-related issues; Docket No. ER04-869-000, in contrast, involves the definition of reliability services.

with our general policy of providing maximum protection to customers,⁹ we will set the refund effective date at the earliest date possible, i.e., 60 days after the date of the filing of the complaint or July 17, 2004.

18. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to render such a decision. Ordinarily, to implement that requirement, we would first direct the presiding judge to provide a report to the Commission. Here, however, given that the refund effective date is July 17, 2004, the Commission cannot follow its normal procedure.

19. Although we do not have the benefit of a presiding judge's report, based on a review of the record, we expect that, assuming the proceeding does not settle, the presiding judge should be able to issue an initial decision within approximately ten months from the date of this order, or by May 31, 2005. If the presiding judge is able to render a decision within that time, we estimate that we will be able to issue our decision within approximately five months of the filing of briefs on and opposing exceptions, or by December 31, 2005.

20. SoCal Edison's concern regarding the effective date of the proposed revisions to its TO Tariff filed in Docket No. ER04-890-000 is outside the scope of this proceeding.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. EL04-103-000 concerning PG&E's complaint, as discussed in the body of this order.

(B) The refund effective date established pursuant to section 206(b) of the Federal Power Act is July 17, 2004.

⁹ See, e.g., *Canal Electric Company*, 46 FERC ¶ 61,153 at 61,539, reh'g denied, 47 FERC ¶ 61,275 (1989).

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(C) Docket Nos. EL04-103-000 and ER04-835-000 are hereby consolidated for purposes of hearing and decision.

(D) The presiding judge designated to preside in Docket No. ER04-835-000, et al., shall determine the procedures best suited to accommodate the consolidation of the proceedings.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.